



TERO

TRIBAL EMPLOYMENT RIGHTS OFFICE

**CERTIFIED VENDORS AND CONTRACTORS' PREFERENCE
REQUIREMENTS AND RESPONSIBILITIES**

INTRODUCTION AND SOURCES OF LAW

The Muscogee (Creek) Nation has passed a law to ensure that American-Indian Owned businesses (businesses) are given a preference in contracting and subcontracting. The contractor preference law, also known as “A Law of the Muscogee (Creek) Nation Creating a New Chapter under MCNCA Title 16 Entitled *Muscogee (Creek) Nation Tribal Employment Rights Office Act* as codified in NCA 12-198, NCA 13-113, NCA 14-026 and NCA 14-159 of the Muscogee (Creek) Nation Annotated Code. These laws are administered by the Tribal Employment Rights Committee, which has adopted policies and procedures to carry out the preference law. The Committee has delegated to the Director of the Tribal Employment Rights Office (TERO) has daily operations and administration of the business preference laws. This document is a summary of the contractor preference law and is meant as a guide. It is not a substitute of NCA 12-198, NCA 13-113, NCA 14-026 and NCA -159, available from TERO or the Internet at www.muscogeenation-nsn.gov.

APPLICATION OF LAW

Contracts with TERO

The business preference law applies to procurement opportunities and contracts entered into by “procuring entities”: the TERO and all Enterprises, Divisions, Agencies and Corporate Entities in which the Muscogee (Creek) Nation has a majority interest or ownership. The laws do not apply to procurement opportunities and contracts awarded directly by private businesses in which the Muscogee (Creek) Nation is not a party, federal or state governments, or their subdivisions. When a procuring agency that is subject to NCA 12-198, NCA 13-113, NCA 14-026 and NCA 14-159, Muscogee (Creek) Nation Annotated Code, has in effect a comprehensive Native American Preference Policy and Procedure, whether impose by a funding agency or adopted pursuant to its own administrative authority, the agency’s policy and procedure shall continue in force and effect in lieu of the requirements of this chapter provided the Compliance Officer determines that the agency’s policy and procedure:

1. Establish preference priorities identical to those stated in NCA 12-198, NCA 13-113, NCA 14-026 and NCA 14-159; and
2. In all other respects, meets or exceeds the requirements of NCA 12-198, NCA 13-113 NCA 14-026 and NCA 14-159; and
3. Provide for an effective complaint procedure; and
4. Are fully and effectively enforced.

Definitions

As provided in NCA 12-198, NCA 13-113, NCA 14-026 and NCA 14-159, Muscogee (Creek) Nation Annotated Code, the following definitions apply:

- A. "Administration" shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.
- B. "Muscogee (Creek) Nation Indian Country" shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by the Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.
- C. "Core crew" shall mean a member of a contractor or subcontractor's crew who is a regular permanent employee that is or has been on the employer's or sub-contractor's payroll for a period of one year continuously, or is an owner of the firm.
- D. "Covered Contract" means any contract between any department or office of the Nation, including all commercial enterprises and independent agencies, and any Employer for goods or services in an amount exceeding \$5,000.
- E. "Debarment List" shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- F. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.
- G. "Employer" shall mean the Nation, Tribal Government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.
- H. An employer is "engaged in work" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on Muscogee (Creek) Nation Indian Country.
- I. "Indian" shall mean a person who is an enrolled Citizen of a federally recognized Indian tribe.
- J. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.
- K. "Indian-owned economic enterprise" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of

the enterprise, and the ownership shall encompass active operations, control, and manage the enterprise.

- L. "Indian Tribe" means an Indian Tribe, pueblo, band, Nation, or other organized group or community, including any Alaska Native Claims Settlement Act (85 Stat. 688,43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- M. "Locally Owned" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Muscogee (Creek) Nation.
- N. An employer is "located in or on the Muscogee (Creek) Nation" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Muscogee (Creek) Nation Indian Country.
- O. "Major Muscogee (Creek) Employer" shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee Citizens as certified by the TERO. A business may be certified as Indian Owned, Major Muscogee Employer, or both.
- P. "Nation" shall mean the Muscogee (Creek) Nation.
- Q. "Tribal Citizen" or "Citizen" shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.
- R. "TERO" shall mean the Tribal Employment Rights Office.
- S. "TERO Staff" shall mean employees hired by the TERO Office to carry out the functions of this Act.

NOTICE TO TERO CERTIFIED VENDORS

Notice of Certified Vendors of Upcoming Contracts is Required

The Tribal Employment Rights Office Act requires that all contractors give TERO Certified Vendors an opportunity to bid on all purchases and/or goods in an awarded project. Only vendors with current certification may be used to meet the Indian Preference requirements of the ordinance. The listing of a vendor on this list is not an endorsement of the vendor's capability to perform certain work.

First Class Mail or Certified Mail

First Class Mail or Certified Mail notification must be sent at least two weeks prior to the procuring entity's established bid submittal date. The notification must contain at a minimum: the project name, bid due date, special requirements such as, licensing requirements, years of experience, references, etc., where bid or product specs may be reviewed, the name of a contact person for the company, company address and phone number.

Notice by Advertisement

Advertisement notification must be submitted to the local paper(s) of Okmulgee County for two weeks. If there are TERO Certified Vendors in Muskogee County or Okfuskee County listed for that type of work sought, then an advertisement must run in the newspaper of record in those counties too. The advertisement must contain at a minimum: the project name, bid due date, special requirements such as licensing requirements, years of experience, references, etc., where bid or product specifications can be reviewed, the name of a contact person for the company, company address and phone number.

In case of an emergency, bidding requirements shall be waived by a TERO Compliance Officer. A TERO Certified Vendor shall be used as feasible. The Procuring Entity must document the information showing that they contacted all TERO Certified Vendors listed in the area of need.

BIDS AND AWARD OF CONTRACTS

All Contractors and Subcontractors Shall Adhere to Bidding Requirements

In a purchase of goods and/or services, a procuring entity shall give TERO Certified Vendors in applicable field an opportunity to bid on the needed good and/or services. If a certified vendor is the lowest qualified responsible bidder, the best value responsible bidder or is equal to the other bidders, the TERO Certified Vendor shall be awarded the contract.

Statement of Preference

General contractors shall include a Native Preference Statement in all subcontracts. This statement will include information relative to Preference Requirements in contracting and employment. The General Contractor will be responsible for ensuring that all subcontracts meet Muscogee (Creek) Nation TERO Preference Requirements.

NOTIFICATION TO TERO

The Contractor or Subcontractor must submit a copy of bid notification to TERO Certified Vendors with the required TERO Forms at bid openings. If the bid notification has been made by certified mail, it will be acceptable to submit a sample representative letter along with a distribution list of the vendors solicited. If the notification was made by an advertisement in

local newspapers, then a copy of the advertisement must be submitted. A Procuring Entity must provide a copy of all bids to a TERO Compliance Officer. A TERO Compliance Officer shall be present at all bid openings.

UTILIZATION OF TRIBAL JOB BANK

The Procuring Entity that is awarded the contract shall utilize the Tribal Job Bank. The contractor, as an employer, shall make a good faith effort to attain workforces that are Job Bank participants. Compliance Monitors are responsible for randomly and periodically checking your workforce for compliance with this requirement.

MANDATORY REPORTS

TERO Forms

The following forms shall be completed by the TERO Certified Vendors and businesses that enter into a contract with the Muscogee (Creek) Nation. This form may be turned into the TERO Office via e-mail, fax or in person by the 5th day of the following month. TERO Compliance Monitors will report those businesses that fail to report monthly to the Committee at the monthly Committee meetings. Please be aware that a Compliance Officer may verify information presented on reports at any time. Failure to report correct information or report at all may result in sanctions or fines as determined by the Committee.

Contractor Monthly Report

This report allows contractors to report compliance activity to the Preference Law.

Job Bank Referral Report

This report allows contractors to report the handling of job bank referrals.

TERO Certified Vendor/Employee Evaluation Form

This report should be completed when an action (promotion, warning, termination, lay-off, voluntary dismissal) is taken against a Job Bank participant.

Complaint Form

This report allows a contractor to make a complaint against a TERO Certified Vendor which has resulted in an economic loss and allows a contractor to seek a remedy for the problem(s) allegedly caused by the Certified Vendor.